

OFFICE OF
THE ATTORNEY GENERAL



STATE OF UTAH

R. PAUL VAN DAM - ATTORNEY GENERAL

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JOSEPH E. TESCH
CHIEF DEPUTY ATTORNEY GENERAL

May 7, 1991

Cindy S. Emmons, Director
Environmental Affairs
Kennecott Utah Copper
P.O. Box 525
Bingham Canyon, Utah 84006-0525

Re: Pine Canyon Reclamation Contract, Barney's Canyon Mine and
All Other Outstanding Kennecott Properties.

Dear Ms. Emmons:

In response to your letter of April 24, 1991, I have been requested to respond concerning your continued reservations about the reclamation contracts. Gregory P. Williams, past chairman of the Board of Oil, Gas and Mining, and Mr. Earl Tingey of your legal staff have communicated on this issue, and Mr. Williams' letter of September 21, 1990 to Mr. Tingey reflects the Board's consensus concerning the forms which you are requested to finalize for the Division.

The concerns set forth again in your April 24th, 1991 letter do not provide a basis for Kennecott's continued failure to enter into agreements with the State of Utah. The amended contract form does not change the obligations of Kennecott, as set forth in the rules or as provided by statute. Your concern about the inclusion of the word "reasonable" as a modifier in several items does not provide a basis for rewriting these contracts. It is well understood that courts do not enforce unreasonable terms, or provide for the payment of unreasonable fees. Finally, addressing your concern about the addition of the term "material" regarding a breach of any provision of the agreement; courts do not provide relief for nonmaterial breaches. Whether a breach of the terms of an agreement amount to a material breach is always a question of fact.

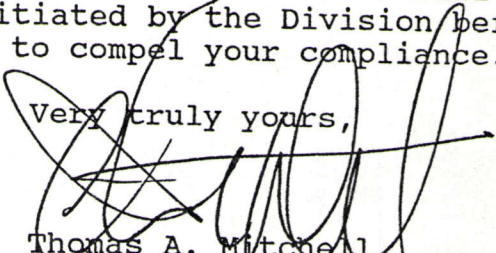
A substantial period of time has lapsed since Kennecott has been required to enter into these agreements pursuant to the directive of the Board of Oil, Gas and Mining. It is time to stop discussing these documents and to sign them.

Wayne
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Failure to complete and finalize these forms will result in adjudicative action being initiated by the Division before the Board of Oil, Gas and Mining to compel your compliance.

Very truly yours,



Thomas A. Mitchell
Assistant Attorney General

lsj
cc: D. Nielson
L. Braxton
W. Hedburg
TAM11